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PROVIDENT LIFE AND ACCIDENT
6 INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

12 ROBERT H. CHRISTENSEN) Case No. C 07 04789

13 Plaintiff,)
14 v.)
15 PROVIDENT LIFE AND ACCIDENT)
INSURANCE COMPANY,)
16 Defendant.)
17)
DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF
CAN BE GRANTED (FRCP 12(b)(6))
Date: November 20, 2007
Time: TBD
Courtroom: TBD

Supporting Papers:

1. Points and Authorities
2. Ferry Declaration
3. [Proposed] Order

1 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 20, 2007, at a time to be selected by the Court,
3 or as soon thereafter as this matter may be heard, Defendant Provident Life & Accident Insurance
4 Company ("Defendant") will move this court to dismiss the Third Cause of Action of Plaintiff's
5 Complaint herein pursuant to FRCP 12(b)(6) because the Third Cause of Action fails to state a claim
6 upon which relief can be granted because a cause of action for violation of Business & Professions
7 Code 17200 cannot lie against an insurance company in an action over a claims dispute. Further,
8 Defendant requests that the Court strike those portions of the Complaint that would support the
9 Third Cause of Action.

10 The motion will be based on this Notice of Motion and Motion, the accompanying
11 Memorandum of Points and Authorities and Declaration of John C. Ferry, and the pleadings and
12 papers filed herein.

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Dated: October 10, 2007

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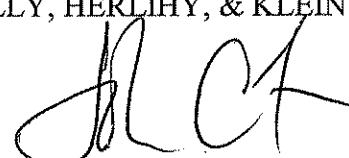
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KELLY, HERLIHY, & KLEIN LLP

By _____



John C. Ferry
Attorneys for Plaintiff
PROVIDENT LIFE & ACCIDENT
INSURANCE COMPANY